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HOUSE OF REPRESENTATIVES

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Part 1

FEDERAL LAND EXCHANGE FACILITATION ACT OF 1986

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Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany H.R. 4814]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 4814) entitled the "Federal Land Exchange Facilitation Act of 1986," having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, line 3, strike all after the enacting clause and insert the following:

That this Act may be cited as the "Federal Land Exchange Facilitation Act of 1986".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that—

(1) land exchanges are a very important tool for Federal and State land managers and private landowners to consolidate Federal, State, and private holdings of land or interests in land for purposes of more efficient management and to secure important objectives including the protection of fish and wildlife habitat and aesthetic values; the enhancement of recreation opportunities; the consolidation of mineral and timber holdings for more logical and efficient development; the expansion of communities; the promotion of multiple-use values; and fulfillment of public needs;

(2) needs for land ownership adjustments and consolidation consistently outpace available funding for land purchases by the Federal Government and thereby make land exchanges an increasingly important method of land acquisition and consolidation for both Federal and State land managers and private landowners;

(3) the Federal Land Policy and Management Act of 1976 and other laws provide a basic framework and authority for land exchanges involving lands under the jurisdiction of the Secretary of the Interior and the Secretary of Agriculture; but

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(4) such existing laws are in need of certain revisions to streamline and facilitate land exchange procedures and expedite exchange timetables.

(b) The purposes of this Act are to—

(1) facilitate and expedite land exchanges pursuant to the Federal Land Policy and Management Act of 1976 and other laws applicable to exchanges involving the Secretaries of the Interior and Agriculture by:

(A) providing more uniform rules and regulations pertaining to land appraisals which reflect nationally recognized appraisal standards but which also reflect any differences between appraisals of lands and interests being considered for acquisition by the Federal Government and appraisals of lands and interests being considered for transfer out of Federal ownership;

(B) establishing procedures and timetables for the arbitration of appraisal disputes; and

(C) providing to the Secretary having jurisdiction over the Federal land involved unified surveying and other authority for land exchanges; and

(2) provide sufficient resources to the Secretaries of the Interior and Agriculture to insure that land exchange activities can proceed consistent with the public interest.

LAND EXCHANGES AND APPRAISALS

SEC. 3. (a) Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) is hereby amended by adding the following new subsections:

"(d)(1) The Secretary of the Interior and the Secretary of Agriculture shall promulgate regulations providing that unless it is mutually agreed otherwise prior to the expiration of ninety days after entering an agreement to initiate an exchange of land or interests therein pursuant to this Act or other applicable law, no later than ninety days after entering into such an agreement the Secretary concerned and the other party or parties involved in the exchange shall arrange for an appraisal of the lands or interests therein involved in the exchange in accordance with subsection (g) of this section.

"(2) If within one hundred and eighty days after the submission of an appraisal for review and approval by the Secretary concerned, the Secretary concerned and the party or parties involved cannot agree to accept the findings of the appraisal, the appraisal shall be submitted to an arbitration to be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. Such arbitration shall be binding on the Secretary concerned and the other party or parties involved in the exchange insofar as concerns the value of the lands which were the subject of the apprisal.

"(3) Within thirty days after the completion of the arbitration, the Secretary concerned and the party or parties involved in the exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or to terminate the exchange. A decision to terminate the exchange may be made by either the Secretary or the other party or parties involved.

"(4) After submission of an appraisal for review by the Secretary concerned but prior to submission of an appraisal to arbitration pursuant to paragraph (2) of this subsection, if both the Secretary concerned and the other party or parties involved in an exchange determine it is in the best interest of consummating an exchange pursuant to this Act or other applicable law, they may mutually agree to employ a process of bargaining or some other process (instead of arbitration) to determine the values of the properties involved in the exchange, or they may mutually agree to suspend or modify any of the following:

"(A) The arbitration requirements of this subsection.

"(B) The deadlines for submission of an appraisal to arbitration.

"(C) The deadline for determinations subsequent to completion of an arbitration.

"(e) Notwithstanding any other provision of law, and unless the Secretary or Secretaries involved in an exchange of land or interests therein pursuant to this Act or other applicable law agree otherwise, the Secretary having jurisdiction over Federal land which would be included in such exchange is henceforth authorized to and shall have the responsibility to perform all necessary land surveys. All surveys shall be in accordance with the manual of surveying instructions of the Secretary of the Interior in effect at the time of survey and shall be filed with the Secretary of the Interior.

"(f) Unless mutually agreed otherwise by the Secretary concerned and the other party or parties involved in an exchange pursuant to this Act or other applicable

law, all patents or titles to be issued for lands or interests therein to be acquired by the Federal Government and lands or interests therein to be transferred out of Federal ownership shall be issued simultaneously.

"(g)(1) Within one year of the enactment of subsections (d) through (i) of this section, the Secretaries of the Interior and Agriculture shall promulgate new and comprehensive rules and regulations governing exchanges of land and interests therein pursuant to this Act and other applicable law. Such rules and regulations shall fully reflect the changes in law made by subsections (d) through (i) of this section and shall include provisions pertaining to appraisals of lands and interests therein involved in such exchanges.

"(2) The provisions of the rules and regulations issued pursuant to paragraph (1) of this subsection governing appraisals shall reflect nationally recognized appraisal standards, including, to the extent appropriate, The Uniform Appraisal Standards for Federal Land Acquisition: Provided, however, That the provisions of such rules and regulations shall—

"(A) Insure that appraisal standards henceforth cover both the acquisition and disposal of land by the Federal government and adequately reflect any differences involved between appraising lands or interests therein being acquired by the Federal government and appraising lands or interests therein being transferred out of Federal ownership; and

"(B) Permit the Secretary to make adjustments to the relative values assigned to properties involved in an exchange in order to reflect the costs (including, but not limited to, such costs as land surveys, mineral examinations, archaeological surveys and salvage, removal of encumbrances, arbitration pursuant to sebsection (d) of this section, curing deficiencies preventing highest and best use, and other costs to comply with laws, regulations and policies applicable to exchange transactions), time and other factors necessary to bring the Federal and non-Federal lands or interests therein involved to their highest and best use for the appraisal and exchange purposes.

"(h) Until such time as new and comprehensive rules and regulations governing exchange of land and interests therein are promulgated pursuant to subsection (g) of this section, land exchanges may proceed in accordance with existing laws and regulations, and nothing in this Act shall be construed to require any delay in, or otherwise hinder, the processing and consummation of land exchanges pending the promulgation of such new and comprehensive rules and regulations. Where the Secretary concerned and the party or parties involved in an exchange have agreed to initiate an exchange of land or interests therein prior to the date of enactment of this Act, the time deadlines and other provisions of subsections (d) through (i) of this section shall not apply to such exchanges unless the Secretary concerned and the party or parties involved in the exchange mutually agree otherwise.

"(i)(1) Notwithstanding the provisions of this Act and other applicable laws which require that exchanges of lands or interests therein be for equal value, where the Secretary concerned determines it is in the public interest and that the consummation of a particular exchange will be expedited thereby, the Secretary concerned may exchange lands or interests therein which are of approximately equal value in cases where:

"(A) the combined value of the lands or interests therein to be transferred from federal ownership by the Secretary concerned in such exchange is not more than $150,000; and

"(B) the Secretary concerned finds in accordance with the regulations to be promulgated pursuant to subsection (g) of this section that a determination of approximately equal value can be made without formal appraisals, as based on a certification by a qualified appraiser; and

"(C) the definition of and procedure for determining 'approximately equal value' has set forth in regulations by the Secretary concerned and the Secretary concerned documents how such determination was made in the case of the particular exchange involved.

"(2) As used in this subsection, the term 'approximately equal value' shall have the same meaning as it does in the Act of January 22, 1983 (commonly known as the 'Small Tracts Act').".

(b) The first sentence of section 206(b) (43 U.S.C. 1716(b)) of the Federal Land Policy and Management Act of 1976 is hereby amended by inserting the word "concerned" after the words "the Secretary".

LAND EXCHANGE FUNDING

SEC. 4. In order to ensure that there are increased funds and personnel available to the Secretaries of the Interior and Agriculture to consider, process, and consummate land exchanges pursuant to the Federal Land Policy and Management Act of 1976 and other applicable law, there are hereby authorized to be appropriated for fiscal years 1988 through 1997 an annual amount not to exceed $4,000,000 which shall be used jointly or divided among the Secretaries as they determine appropriate for the consideration, processing, and consummation of land exchanges pursuant to the Federal Land Policy and Management Act of 1976, as amended, and other applicable law. Such moneys are expressly intended by Congress to be an addition to, and not offset against, moneys otherwise annually requested by the Secretaries, and appropriated by Congress for land exchange purposes.

SEC. 5. (a) Section 205 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715(c)) is amended in the first sentence of subsection (c) by striking out "Lands and interests" and inserting in lieu thereof "Except as provided in subsection (e), lands and interests".

(b) Section 205 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1715(c)) is further amended by adding at the end thereof the following new subsection:

"(e) Lands acquired by the Secretary pursuant to this section or section 206 in exchange for lands which were revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218) or reconveyed to the United States pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to, the revested or reconveyed lands exchanged for the lands acquired by the Secretary.".

SEC. 6. Nothing in this Act shall be construed as amending the Alaska Native Claims Settlement Act (P.L. 92-203, as amended) or the Alaska National Interest Lands Conservation Act (P.L. 96-487, as amended) or as enlarging or diminishing the authority with regard to exchanges conferred upon either the Secretary of the Interior or the Secretary of Agriculture by either of such Acts.

PURPOSE

This bill is aimed at expediting land exchanges between the Forest Service or Bureau of Land Management (BLM) on the one hand, and other parties, on the other, by streamlining the procedures for such exchanges and by authorizing appropriate funding.

BACKGROUND AND NEED

Land ownership patterns in the western United States, and to a lesser degree in the eastern part of the nation, are the result of numerous laws which were enacted in the 19th and 20th centuries to govern the disposal of Federal lands from the public domain and the Federal acquisition of lands or interests in land throughout the nation. Although these laws have generally served their intended purposes, they have also resulted in land ownership patterns, particularly in the western states, that are often complex and in need of adjustment to promote more efficient land management and to serve other important public and private objectives. The problems are most extensive on lands managed by the Secretary of the Interior and the Secretary of Agriculture.

For example, the "checkerboard" patterns of alternate section land ownership that resulted from the railroad land grants and statehood acts of the late 19th and early 20th centuries have sometimes made it very difficult for the Federal government, states, and corporate and private landowners to manage their lands in a coherent fashion. These patterns have caused problems and disputes ranging from questions of access to the promotion of efficient

timber, mineral, and grazing operations and the protection of land for conservation purposes. Likewise, numerous "inholdings" in tracts of Federal, state and, to a lesser degree, private lands created as a result of the mining, homestead, and other laws have sometimes frustrated efforts to manage lands for purposes of community expansion, resource and recreation development, National Parks, Wilderness Areas, Wild and Scenic Rivers, wildlife habitat protection and the like.

In recognition of the ever-changing need to adjust land ownership patterns to accommodate public and private needs, Congress has on numerous occasions enacted legislation to promote land acquisition and disposal by the Federal government through purchase, sale, condemnation, donation and land exchange: Land exchanges can be an especially important land ownership adjustment tool in certain situations because they do not generally require significant cash outlays, they can avoid some of the acrimony and prolonged disputes that can accompany eminent domain or purchase transactions, and because they have the advantage of offering all parties involved compensation in land in cases where cash might not be an attractive substitute (i.e., a rancher, timber company, or other private landowner considering conveying land to the Federal government might need alternate land to continue operations).

To authorize and facilitate land exchanges over the years, Congress has enacted numerous laws. Notable among these are the Weeks Law of 1911 (which generally applies to eastern national forest lands), the General Exchange Act of 1922 (applies to national forests created from the public domain), the Federal Land Policy and Management Act of 1976 (which covers both BLM and National Forest System lands), and the Act of July 15, 1968, P.L. 90–401 (which applies to the National Park Service).

While these laws have generally served quite well to promote land exchanges between the Federal government and the state and/or private sector, the Committee believes there is, nevertheless, room for improvement, and particularly with respect to streamlining exchange procedures, accelerating exchange timetables and establishing rules and regulations that are more uniform and consistent from agency to agency. In so doing, the Committee wishes to emphasize that nothing in H.R. 4814 is intended to change the basic principles and groundrules of existing law governing land exchanges. In particular, the well-established principle that land exchanges are "willing-buyer and willing-seller" transactions which must be in the "public interest," would remain unaltered by H.R. 4814. Likewise, the requirement that exchanges be for "equal value" would continue to be applied to all exchanges, except for those where land values are $150,000 or less and certain determinations are made that the public interest can best be served by foregoing expensive and complicated appraisals in favor of a determination of "approximate equal value."

With the basic tenets of land exchange authority remaining unchanged, the Committee believes that H.R. 4814 can best be characterized as "procedural" legislation which should assist the Federal government, the states and the private sector alike by facilitating and expediting land exchanges that are in the public interest. H.R.

4818 would do this by making the following significant changes in or addition to existing law:

Land Appraisals.—In the experience of many who have been involved in land exchanges with the Secretaries of Interior and Agriculture over the years, the process of securing Federal approval of an appraisal of tracts of land involved in an exchange can be extremely costly and time consuming, and can often constitute the greatest single obstacle to successful consummation of a land exchange. Of course, much of this difficulty can be attributed to the fact that the art of appraisal is not an exact science and that there is room for honest and wide divergence of opinion as to the value of a particular tract of land. Be that as it may, the Committee believes it is also true that there are cases where Federal officials responsible for making and/or reviewing an appraisal may decline to make timely decisions for numerous reasons, including fear of making the wrong decision or assigning to a property a value that a superior deems incorrect.

While the Committee believes agency personnel should negotiate exchange on terms as favorable as possible to the government (the law requires exchanges to be in the "public interest"), the law also requies exchanges to be for "equal value" and under this test the Secretary has a duty to determine fair market value for all properties to be exchanged, not simply the most favorable value to one party (i.e., the government). The Committee believes that problems in this regard sometimes arise under current law where a Federal official often is both an interested party in, and a final arbiter of, appraisal disputes. In short, the Committee believes that the government's role as "judge and jury" in appraisal disputes can sometimes hinder or defeat the consummation of land exchanges that are in the public interest, to the detriment of all parties involved.

To overcome this problem, and to generally expedite the appraisal of lands involved in exchanges, H.R. 4814 does two main things. First, it requires that within 90 days of reaching an informal or formal agreement to initiate a land exchange, the Secretary concerned will make arrangements with the state and/or private party or parties to be involved in the exchange for an appraisal of the tracts of land to be exchanged. Of course, any such appraisal arrangements, as under current law, will be determined by the parties, and H.R. 4814 makes no judgment as to who should perform the appraisals, how long they should take, who should pay for them, etc. The Committee also wishes to stress that by using the words "agreement to initiate an exchange," there is no decision implied that the Secretary concerned or any other party is bound to pursue the exchange to consummation. Rather, "an agreement to initiate an exchange" is itended to merely describe and reflect the point at which the parties determine that a potential land exchange may be a "good idea" and hence, worthy of detailed study, the initiation of appraisals and/or the preparation of any required documents (such as environmental assessments, or impact statements) preparatory to any formal Federal decisions on the exchange.

The second key provision of H.R. 4814 concerning appraisals is that the bill establishes a conflict resolution mechanism for appraisal disputes that last for more than six months. More precisely,

where an appraisal is completed and submitted for approval to the appropriate Federal review officer or agency, and no agreement on the appraisal is reached within six months, H.R. 4814 provides for immediate confilct resolution. Under the bill, as reported, the appraised values of lands in dispute are to be settled by arbitration conducted in accordance with the Real Estate Valuation Arbitration Rules of the American Arbitration Association (AAA). Or, if the parties mutually agree that the AAA process is too cumbersome or they otherwise want to forego arbitration by the AAA, they may mutually agree to substitute bargaining or some other conflict resolution process ("third party" arbitration, use of "Blue Ribbon Panels," etc.) to determine land values.

In permitting various conflict resolution options, the Committee expresses no preference for any particular method. Different methods may prove appropriate in different cases. However, if no particular method can be mutually agreed to, arbitration by the American Arbitration Association will be required in order to achieve the Committee's goal of securing a conclusive determination of land values within a reasonable time frame. The Committee hopes that the provision for such conclusive arbitration will also ultimately act as an incentive to all parties involved in future land exchanges to settle appraisal disputes within six months of appraisal submission in order to avoid activation of arbitration or other conflict resolution procedures.

It should be stressed that the arbitration or other conflict resolution mechanisms of H.R. 4814 are limited to establishing the values for the tracts of land involved. H.R. 4814 specifically provides that even after conclusive determination of land values, any of the parties may elect to terminate the exchange, or the parties may wish to modify the exchange proposal to reflect the findings of the arbitration or for some other reason. For example, either the Secretary concerned or other parties may agree to add or subtract lands offered in the overall exchange, or modify the amount of cash equalization which may be necessary to reflect appraisal adjustments made through the arbitration/conflict resolution process. And the Committee also notes that the time deadlines or other requirements may be modified or suspended by mutual agreement of the parties.

Land Surveys.—Another serious impediment to the consummation of some land exchanges involving national forest lands in the western United States has been the fact that Bureau of Land Management survey crews have generally performed most survey work on national forests. While this causes few problems in certain areas, in other states or regions BLM often has lengthy survey backlogs and its survey priorities may not be the same as those of the Forest Service.

To expedite matters, H.R. 4814 would give the Forest Service authority and responsibility to perform its own survey work for land exchanges, meaning that it will no longer have to wait for BLM survey crews to fit such work into their schedules. However, to insure uniform survey standards and recordkeeping, H.R. 4814 would require that any such Forest Service surveys be performed in accordance with the Secretary of the Interior's *Manual of Surveying Instructions* and be filed with the Secretary of the Interior.

Rules and Regulations.—Another frequent complaint with current land exchange procedures is that the existing rules, regulations and policies governing exchanges can vary widely from agency to agency (Forest Service, BLM, Fish and Wildlife Service, etc.). Not only can this be confusing for landowners who may want to exchange with several agencies, but it can also complicate individual exchange where more than one agency is involved. Further, it has been noted that agency appraisal standards can vary considerably, and that the current overall Federal appraisal guidelines, the Uniform Appraisal Standards for Federal Land acquisitions, govern only the acquisition, and not the *disposal*, of lands by the Federal government.

To address these problems and to provide more uniform regulations and appraisal standards for agencies under the jurisdiction of the Secretaries of the Interior and Agriculture, H.R. 4814 would require the promulgation of comprehensive new rules and regulations governing land exchange policies and procedures and appraisal standards. It is the Committee's intent that such new rules and regulations be made as uniform and consistent as possible from agency to agency and, wherever possible, that joint rules and regulations be promulgated. Of course, the Committee recognizes that the separate laws which govern BLM, the Forest Service, and other agencies may preclude the promulgation of rules and regulations which are completely joint in nature, but every effort should be made to maximize uniformity. Further, the Uniform Appraisal Standards for Federal Land Acquisition, at least insofar as the Secretaries of the Interior and Agriculture are concerned, should be revised to also apply to appraisals of lands being disposed of by the Secretaries, and to reflect any differences between the appraisal of land for acquisition and the appraisal of land for disposal (such as the need to prepare lands for compliance with local zoning laws, etc.).

Cost Preparatory to Land Exchanges.—In virtually any land exchange between the Federal government and another party, substantial costs are incurred by all parties to prepare the lands involved for exchange. Such costs include survey work of all kinds, archeological survey and salvage, preparation of required environmental impact studies, mineral examinations, and the removal of encumbrances to clear title.

In most circumstances, it would be assumed that each party involved in an exchange would be responsible for performing and paying in cash any cost associated with bringing its own lands to the condition of merchantable title or "highest and best use" for exchange purposes. However, there are many cases where, for purposes of increased efficiency or because of a lack of funds on the part of one of the parties involved, one party will agree to absorb all or part of the other's costs. In addition, because of budget cutbacks, the Forest Service, BLM and other agencies in recent years have increasingly asked the other parties to pay for land surveys, environmental studies, archaeological surveys and salvage and other costs associated with preparing Federal lands for exchange. While there are many instances where a non-Federal party is willing to absorb the additional financial costs, the committee believes that other meritorious exchange proposals are being stymied be-

cause one party doesn't have the funds to pay its own "costs to cure" and the other party is unwilling to asume the additional financial burden.

To address this problem, H.R. 4814 would give the Secretaries of Agriculture and the Interior clear discretionary authority to adjust the relative dollar values of lands involved in an exchange to compensate a party for all or part of the costs assumed on behalf of another party. In essence, the provision would allow the Secretary or the private party to use land, instead of cash, to pay for such cost. To illustrate what is intended by this provision, the Committee gives the following examples illustrating how it might be used by the Secretaries:

Case A: A land exchange is proposed which the Forest Service or BLM believes will clearly be in the public interest but in which the private party offering lands to the agency needs a quick exchange for financial reasons. Unfortunately, the agency's budget for the particular area does not contain enough money to pay for required survey work, archaeological salvage, and environmental studies for several years and "emergency" funds cannot be found in the agency's overall budget.

Under H.R. 4814, the Secretary would be able to negotiate with the private party to pay for survey, archaeological and environmental work, and could compensate the private party for all or part (as determined by negotiation) of such costs by either giving more acreage or by receiving less acreage, or adjusting any required cash equalization payments.

Case B: A Federal property proposed for disposal by exchange is encumbered by the existence of outstanding, unpatented mining claims. The Federal Government believes the claims are unpatentable but estimates it will cost $100,000 and take the agency three years to contest and invalidate the claims. Private investigation indicates that the claimholder is willing to sell his rights for $50,000 to the private party wishing to acquire the tract, which party would then relinquish the claims concurrent with consummation of the exchange. The government would obviously save considerable time and money using such an approach, but present agency policy does not allow the private party to be compensated for the $50,000 expense in purchasing the claim rights and clearing the agency's land title.

Under H.R. 4814, the Secretary would have the discretion to compensate the private party for all or part of the $50,000 expense by adjusting relative land values involved in the exchange, or by cash equalization.

Case C: An exchange of private and Federal tracts in close proximity to each other is proposed. Survey work needs to be done on both tracts and the parties agree that the agency survey crew can save time and costs by doing all survey work at once, rather than have government crews survey the governmnent lands and private crews do the private survey work.

Under H.R. 4814, the parties could agree (voluntarily, of course) to have the private party compensate the Secretary concerned for performing the survey work on the private land by transferring additional acreage to the Secretary in the exchange, or by increasing cash equalization payments.

The committee believes the authority to adjust relative land values will give the Secretaries concerned far greater flexibility to creatively pursue meritorious land exchanges which may currently be constrained by budgetary, policy or other realities. Obviously, in utilizing such discretionary authority, the Secretary concerned should exercise good judgment and common sense, and should not construe this authority as a wholesale license to pay for administrative costs in every instance. For example, where an area might be so rich in archaeological resources that archaeological survey and salvage costs might approach or exceed the value of the land itself, an exchange should probably not be pursued. Likewise, where land values are so low that paying for surveys, etc., in land might mean doubling the Federal acreage to be disposed, an exchange might be ill-advised. Above all, it should be remembered that the law requires that all land exchanges must in the "public interest" and any use of the discretionary authority should be judged thereby.

"Small Tracts" Exchanges.—In 1983, Congress enacted the so-called "Small Tracts Act" (Public Law 97-465, 16 U.S.C. 521c-521i) which, among other things, allowed the Forest Service to exchange certain small tracts of land of "approximate equal value" without a formal appraisal, where the land value was $150,000 or less and where the exchange was determined to be in the public interest.

At the suggesiton of the Forest Service, H.R. 4814 would expand this principle of the Small Tracts Act to all land exchanges involving the Secretaries of Agriculture and the Interior, where (1) the value of the lands to be disposed of by the Secretary is $150,000 or less; (2) where the determination of "approximate equal value" is based on a certification by a qualified appraiser; and (3) where the determination is made in accordance with established regulation and justified on a case-by-case basis.

The intention of these provisions of the bill is to reduce the administrative costs and review involved in small land exchanges by allowing the agencies to forego detailed formal appraisals in favor of so-called "short form" appraisals or other appropriate methods of determining land values. The Committee also assumes and expects that the regulations adopted to implement these provisions will follow the Small Tracts Act regulations by permitting simplified exchange procedures, a reduced level of required administrative review within the agency, and less complicated documentation and review thereof. However, it must be emphasized that even with the simplified procedures, smaller land exchanges will still have to comply with all requirements of applicable law, including any necessary review under the National Environmental Policy Act of 1969 or the National Forest Management Act.

Land Exchange Funding.—With the budget cuts that have occurred in numerous Federal agencies in recent years, the Committee is concerned that opportunities to process and consummate meritorious land exchanges are being lost or seriously delayed due to a simple lack of Federal personnel and funds to process exchanges. While the Committee is sympathetic to efforts to reduce budget deficits, cutbacks in funding and personnel for land exchanges are especially serious in an era where other potential methods of Federal land acquisition (particularly acquisition using

Land & Water Conservation Fund monies) have been impeded. More specifically, the Committee believes that land exchanges, because they generally do not involve large cash outlays by the government, will be a very important land adjustment tool in times of fiscal austerity.

THE COMMITTEE AMENDMENT

The Committee adopted an amendment in the nature of a substitute. Its provisions are described more fully in the Section-By-Section Analysis portion of this Report.

SECTION-BY-SECTION ANALYSIS

As reported, H.R. 4814 has six sections.

Section 1 provides a short title, namely the "Federal Land Exchange Facilitation Act of 1986."

Section 2 establishes certain Congressional findings and outlines the purposes for the bill:

FINDINGS

The first finding is that land exchanges are a very important tool for consolidation of Federal, State, and private landholdings and for better management of such lands. This finding should not be read as suggesting that the Committee believes that land exchanges can be substituted for other methods of land acquisition or consolidation in all instances; continued acquisition of land by the Federal government, through the Land and Water Conservation Fund, remains an important method of advancing important national interests. However, exchanges can play an important role as an additional means of acquiring lands for protection of important values and for furtherance of recreational, developmental, and other uses.

The second finding is that land exchanges are given additional importance because needs for land-ownership adjustments consistently outpace available funding for land purchases by the Federal government.

The third finding is that existing law, including the Federal Land Policy and Management Act of 1976, provides a sound basic framework and authority for land exchanges by the Forest Service and Bureau of Land Management (BLM).

The fourth finding is that existing laws could nonetheless be improved through certain revisions such as those which would be made by enactment of this bill.

PURPOSES

The first specified purpose is to facilitate and expedite land exchanges by (1) providing more uniform rules and regulations which reflect nationally-recognized appraisal standards and also any differences between appraisals of lands and interests being considered for Federal acquisition and those being considered for transfer out of Federal ownership; (2) establishing procedures and timetables for arbitration of disputes over appraisals of properties being considered for exchange; (3) giving the concerned Secretary authority to

survey lands being considered for exchange; and (4) providing sufficient resources to enable the Forest Service and BLM to proceed with an ongoing program of exchanges.

Section 3 would amend the Federal Land Policy and Management Act of 1976 (FLPMA) by adding six new subsections to section 206 of that Act:

FIRST NEW SUBSECTION

The first new subsection to be added to FLPMA would require the Secretary of Agriculture and the Secretary of the Interior to promulgate regulations establishing certain deadlines.

The first deadline would be for arranging for an appraisal of property being considered for exchange; such arrangements would have to be made no later than 90 days after the Secretary concerned enters into an agreement to initiate an exchange with another party, unless prior to such 90-day deadline there is mutual agreement to proceed otherwise.

The second deadline would fall 180 days after the appraiser has submitted an appraisal for review and approval by the relevant Secretary. If that deadline arrives without a prior agreement by the relevant Secretary and the other party or parties either that the appraisal is acceptable, or that normal procedures be waived, then the appraisal is to be submitted to arbitration under the rules of the American Arbitration Association, with the results of such an arbitration being binding so far as concerns the value of the lands which were the subject of the appraisal. (However, prior to this second deadline the Secretary concerned and the other party or parties, by mutual agreement, can suspend or modify the second or third deadline or the arbitration requirements themselves.)

The third deadline would fall 30 days after the completion of an arbitration. That would be the deadline for the Secretary and the other party or parties to determine whether to proceed with the exchange, modify the exchange, or terminate the exchange. Either side could unilaterally decide to terminate the exchange, so long as this deadline for a decision is met.

SECOND NEW SUBSECTION

The second new subsection which the bill would add to section 206 of FLPMA would provide that absent an agreement to the contrary the Secretary or Secretaries involved in an exchange shall have authority and responsibility to perform necessary land surveys, in accordance with the BLM manual of surveying instructions currently in effect. The effect of this is to authorize the Forest Service to do necessary surveys in connection with exchange to which the Forest Service is a party.

THIRD NEW SUBSECTION

The third new subsection would provide that all patents or titles to lands involved on both sides of an exchange would be issued simultaneously, unless the parties to an exchange should mutually agree otherwise.

FOURTH NEW SUBSECTION

The fourth new subsection would require that regulations governing exchanges be promulgated by the Secretary of the Interior and the Secretary of Agriculture within one year after the enactment of this bill. These regulations are to reflect national appraisal standards, and also are to permit the relevant Secretary to make adjustments to the relative values assigned to properties involved in an exchange in order to reflect the costs, time, and other factors necessary to bring the lands involved in an exchange to their highest and best use for appraisal and exchange purposes. (Examples of such costs would include surveys, mineral examinations, archeological surveys, and the like).

FIFTH NEW SUBSECTION

The fifth new subsection which the bill would add to section 206 of FLPMA would provide that until the new rules and regulations required by the fourth new subsection are in place, land exchanges may proceed in accordance with existing laws and regulations, and free from the deadlines and other provisions of the first new subsection.

SIXTH NEW SUBSECTION

The sixth new subsection deals with cases in which the combined values of one or more parcels of lands (or interests therein) being considered for transfer out of federal ownership in a single exchange is no more than $150,000. In such a case, under the provisions of this new subsection, the Secretary concerned could exchange such lands and interests for lands and interests of approximately (as opposed to exactly) equal value, provided that the Secretary finds that a determination of approximate equal value can be made without a formal appraisal (as based on a certification by a qualified appraiser). Such procedure would have to be in accordance with established regulation and the Secretary concerned would be required to document how the requisite determination was made.

Section 4 of H.R. 4814 is an authorization for appropriations to implement the bill. This section would authorize an annual appropriation of up to $4 million for fiscal years 1988 through 1997, to be used jointly by the Interior and Agriculture Departments (or divided among the Departments as their respective Secretaries deem appropriate, such as through inter-agency teams of specialists) for purposes of considering, processing, and consummating land exchanges. The section is worded so as to make clear the intent of Congress that the moneys appropriated pursuant to this authorization are to be in addition to (and not offset against) other funds annually requested by and appropriated for similar purposes.

Section 5 would amend section 205 of FLPMA so as to make clear that lands (or pursuant to section 206 of FLPMA) in exchange for lands which had been revested in the United States or reconveyed to the United States pursuant to specified laws dealing with the former grant lands for the Oregon & California Railroad shall be considered to have the same status (and be administered in accord-

ance with the same provisions of law) as the revested or reconveyed lands for which they were exchanged. The effect of this is to make clear that, in the case of exchange involving so-called "O&C" lands in western Oregon, lands coming into federal ownership in exchange for "O&C" lands shall themselves be cosidered to be "O&C" lands.

Section 6 of H.R. 4814 provides that nothing in the bill is to be considered as amending the Alaska Lands Act or the Alaska Native Claims Settlement Act or as enlarging or diminishing the authority that either of those Acts provides to the Forest Service or the Interior Department with respect to exchanges.

Oversight Statement

The Committee on Interior and Insular Affairs will have continuing responsibility for oversight of the implementation of H.R. 4814 after its enactment. No reports or recommendations were received by the Committee pursuant to Rule X, clause 2(b)(2) of the Rules of the House of Representatives.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of Rule XI of the Rules of the House of Representatives, the Committee finds that enactment of H.R. 4814 will have no inflationary impact on the national economy.

Cost and Budget Act Compliance

In the opinion of the Committee, enactment of H.R. 4814 will not result in significant costs. The estimate of the Congressional Budget Office follows:

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 4814.
2. Bill title: Federal Land Exchange Facilitation Act of 1986.
3. Bill status: As ordered reported by the House Committee on Interior and Insular Affairs, July 23, 1986.
4. Bill purpose: H.R. 4814 would authorize the appropriation of up to $4 million annually from fiscal year 1988 through fiscal year 1997 to facilitate federal land exchanges.

The bill also would require that within one year of the bill's enactment, the Secretary of Agriculture and the Secretary of the Interior promulgate new and comprehensive rules and regulations governing land exchanges that incorporate certain provisions and timetables for land appraisals and arbritration of appraisal disputes. The bill would provide for binding arbitration of appraisal disputes when land is being exchanged but would allow waivers or delays of the regulations' requirements upon mutual agreement of the parties involved in the exchange.

H.R. 4814 would also: give the Secretary having jurisdiction over the lands being exchanged the authority to perform land surveys and issue patents or title to land; provide for the simultaneous exchange of patents and titles of land involved in an exchange; modify the requirement that lands exchanged be of equal value to

allow some small tracts to be exchanged for lands of approximately equal value; and allow existing laws pertaining to land exchanges to remain in effect until the new regulations are promulgated.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

	1987	1988	1989	1990	1991
Authorization level		4	4	4	4
Estimated outlays		4	4	4	4

In addition, we estimate that outlays totaling $28 million will be incurred from fiscal years 1992 through 1997, as a result of the authorization in this bill.

The costs of this bill fall within budget function 302.

Basis of Estimate: This estimate assumes that the full amounts authorized in the bill will be appropriated prior to the beginning of each fiscal year. Outlays are estimated based on information from the Department of Agriculture and the Department of the Interior.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: None.

9. Estimate prepared by: Theresa A. Gullo.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

Legislative History and Committee Recommendation

H.R. 4814 was introduced by Representatives Seiberling, Udall, Strang, Vento, Pashayan, Richardson, Morrison of Washington, Reid, Stallings, Jeffords, Hansen and Lehman of California. A hearing was held by the Subcommittee on Public Lands on June 16, 1986, and on July 17, 1986, the Subcommittee adopted an amendment in the nature of a substitute and favorably referred the bill as so amended to the full Committee. On July 23, 1986, the Committee on Interior and Insular Affairs adopted an amendment in the nature of a substitute and ordered the bill, as so amended, favorably reported to the House by unanimous voice vote.

Changes in Existing Law

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Federal Land Policy and Management Act of 1976

(90 Stat. 2744, 2755; 43 U.S.C. 1715, et. seq)

* * * * * * *

SEC. 205. (a) Notwithstanding any other provisions of law, the Secretary, with respect to the public lands and the Secretary of Agriculture, with respect to the acquisition of access over non-Fedeal lands to units of the National Forest System, are authorized to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or intrests therein: Provided, That with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose. Nothing in this subsection shall be construed as expanding or limiting the authority of the Secretary of Agriculture to acquire land by eminent domain within the boundaries of units of the National Forest System.

(b) Acquisitions pursuant to this section shall be consistent with the mission of the department involved and with applicable department land-use plans.

(c) [Lands and interest] *Except as provided in subsection (e), lands and interests* in lands acquired by the Secretary pursuant to this section or section 206 shall, upon acceptance of title, become public lands, and, for the administration of public land laws not repealed by this Act, shall remain public lands. If such acquired lands or interests in lands are located within the exterior boundaries of a grazing district established pursuant to the first section of the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315) (commonly known as the "Taylor Grazing Act"), they shall become a part of that district. Lands and interests in lands acquired pursuant to this section which are within boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable thereto.

(d) Lands and interests in lands acquired by the Secretary of Agriculture pursuant to this section shall, upon acceptance of title, become National Forest System lands subject to all the laws, rules, and regulations applicable thereto.

(e) Lands acquired by the Secretary pursuant to this section or section 206 in exchange for lands which were revested in the United States pursuant to the provisions of the Act of June 9, 1916 (39 Stat. 218) or reconveyed to the United States pursuant to the provisions of the Act of February 26, 1919 (40 Stat. 1179), shall be considered for all purposes to have the same status as, and shall be administered in accordance with the same provisions of law applicable to, the revested or reconveyed lands exchanged for the lands acquired by the Secretary.

SEC. 206. (a) A tract of public land or interests therein may be disposed of by exchange by the Secretary under this Act and a tract of land or interests therein within the National Forest System may be disposed of by exchange by the Secretary of Agriculture under applicable law where the Secretary concerned determines that the public interest will be well served by making that exchange: Provided, That when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and the Sec-

retary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired.

(b) In exercising the exchange authority granted by subsection (a) or by section 205(a) of this Act, the Secretary *concerned* may accept title to any non-Federal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land or interest to be acquired. For the purposes of this subsection, unsurveyed school sections which, upon survey by the Secretary, would become State lands, shall be considered as "non-Federal lands". The values of the lands exchanged by the Secretary under this Act and by the Secretary of Agriculture under applicable law relating to lands within the National Forest System either shall be equal, or if they are not equal, the values will be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. The Secretary concerned shall try to reduce the amount of the payment of money to as small an amount as possible.

(c) Lands acquired by exchange under this section by the Secretary which are within the boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable to the National Forest System. Lands acquired by exchange by the Secretary under this section which are within the boundaries of National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails, or any other System established by Act of Congress may be transferred to the appropriate agency head for administration as part of such System and in accordance with the laws, rules, and regulations applicable to such System.

(d)(1) The Secretary of the Interior and the Secretary of Agriculture shall promulgate regulations providing that unless it is mutually agreed otherwise prior to the expiration of ninety days after entering an agreement to initiate an exchange of land or interests therein pursuant to this Act or other applicable law, no later than ninety days after entering into such an agreement the Secretary concerned and the other party or parties involved in the exchange shall arrange for an appraisal of the lands or interests therein involved in the exchange in accordance with subsection (g) of this section.

(2) If within one hundred and eighty days after the submission of an appraisal for review and approval by the Secretary concerned, the Secretary concerned and the party or parties involved cannot agree to accept the findings of the appraisal, the appraisal shall be submitted to an arbitration to be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. Such arbitration shall be binding on the Secretary concerned and the other party or parties involved in the exchange insofar as concerns the value of the lands which were the subject of the appraisal.

(3) Within thirty days after the completion of the arbitration, the Secretary concerned and the party or parties involved in the exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or to terminate the exchange. A decision to terminate the exchange may be made by either the Secretary or the other party or parties involved.

(4) After submission of an appraisal for review by the Secretary concerned but prior to submission of an appraisal to arbitration pursuant to paragraph (2) of this subsection, if both the Secretary concerned and the other party or parties involved in an exchange determine it is in the best interest of consummating an exchange pursuant to this Act or other applicable law, they may mutually agree to employ a process of bargaining or some other process (instead of arbitration) to determine the values of the properties involved in the exchange, or they may mutually agree to suspend or modify any of the following:

(A) The arbitration requirements of this subsection.

(B) The deadlines for submission of an appraisal to arbitration.

(C) The deadline for determinations subsequent to completion of an arbitration.

(e) Notwithstanding any other provision of law, and unless the Secretary or Secretaries involved in an exchange of land or interests therein pursuant to this Act or other applicable law agree otherwise, the Secretary having jurisdiction over Federal land which would be included in such exchange is henceforth authorized to and shall have the responsibility to perform all necessary land surveys. All surveys shall be in accordance with the manual of surveying instructions of the Secretary of the Interior in effect at the time of survey and shall be filed with the Secretary of the Interior.

(f) Unless mutually agreed otherwise by the Secretary concerned and the other party or parties involved in an exchange pursuant to this Act or other applicable law, all patents or titles to be issued for lands or interests therein to be acquired by the Federal Government and lands or interests therein to be transferred out of Federal ownership shall be issued simultaneously.

(g)(1) Within one year of the enactment of subsections (d) through (i) of this section, the Secretaries of the Interior and Agriculture shall promulgate new and comprehensive rules and regulations governing exchanges of land and interests therein pursuant to this Act and other applicable law. Such rules and regulations shall fully reflect the changes in law made by subsections (d) through (i) of this section and shall include provisions pertaining to appraisals of lands and interests therein involved in such exchanges.

(2) The provisions of the rules and regulations issued pursuant to paragraph (1) of this subsection governing appraisals shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition: Provided, however, That the provisions of such rules and regulations shall—

(A) Insure that appraisal standards henceforth cover both the acquisition and disposal of land by the Federal government and adequately reflect any differences involved between appraising

lands or interests therein being acquired by the Federal government and appraising lands or interests therein being transferred out of Federal ownership; and

(B) Permit the Secretary to make adjustments to the relative values assigned to properties involved in an exchange in order to reflect the costs (including, but not limited to, such costs as land surveys, mineral examinations, archaeological surveys and salvage, removal of encumbrances, arbitration pursuant to subsection (d) of this section, curing deficiences preventing highest and best use, and other costs to comply with laws, regulations and policies applicable to exchange transactions), time and other factors necessary to bring the Federal and non-Federal lands or interests therein involved to their highest and best use for the appraisal and exchange purposes.

(h) Until such time as new and comprehensive rules and regulations governing exchange of land and interest therein are promulgated pursuant to subsection (g) of this section, land exchanges may proceed in accordance with existing laws and regulations, and nothing in this Act shall be construed to require any delay in, or otherwise hinder, the processing and consummation of land exchanges pending the promulgation of such new and comprehensive rules and regulations. Where the Secretary concerned and the party or parties involved in an exchange have agreed to initiate an exchange of land or interests therein prior to the date of enactment of this Act, the time deadlines and other provisions of subsections (d) through (i) of this section shall not apply to such exchanges unless the Secretary concerned and the party or parties involved in the exchange mutually agree otherwise.

(i)(1) Notwithstanding the provisions of this Act and other applicable laws which require that exchanges of lands or interests therein be for equal value, where the Secretary concerned determines it is in the public interest and that the consummation of a particular exchange will be expedited thereby, the Secretary concerned may exchange lands or interests therein which are of approximately equal value in cases where:

(A) the combined value of the lands or interests therein to be transferred from federal ownership by the Secretary concerned in such exchange is not more than $150,000; and

(B) the Secretary concerned finds in accordance with the regulations to be promulgated pursuant to subsection (g) of this section that a determination of approximately equal value can be made without formal appraisals, as based on a certification by a qualified appraiser; and

(C) the definition of and procedure for determining "approximately equal value" has been set forth in regulations by the Secretary concerned and the Secretary concerned documents how such determination was made in the case of the particular exchange involved.

(2) As used in this subsection, the term "approximately equal value" shall have the same meaning as it does in the Act of January 22, 1983 (commonly known as the "Small Tracts Act").

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